

1 THE HONORABLE ROBERT S. LASNIK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 MARSHA LINEHAN, an individual,

10 Plaintiff,

11 v.

12 LANE PEDERSON, an individual, and
13 COGNITIVE AND BEHAVIORAL
14 SPECIALTIES d/b/a DIALECTICAL
15 BEHAVIOR THERAPY NATIONAL
16 CERTIFICATION AND
ACCREDITATION
ASSOCIATION, a Minnesota non-profit
corporation,

17 Defendants.

No. 2:17-cv-01494 RSL

AMENDED STIPULATED PROTECTIVE
ORDER

18 1. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential, proprietary, or
20 private information for which special protection may be warranted. Accordingly, the parties
21 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The
22 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
23 protection on all disclosures or responses to discovery, the protection it affords from public
24 disclosure and use extends only to the limited information or items that are entitled to
25 confidential treatment under the applicable legal principles, and it does not presumptively entitle
26 parties to file confidential information under seal.

AMENDED STIPULATED PROTECTIVE
ORDER
(No. 2:17-cv-01494 RSL) -1
139309179.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
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1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 • confidential financial information, including personal financial statements,
5 income source documents, and tax returns; and
6 • the rates and other terms and conditions applicable to training, consultation,
7 therapy, and other goods and services provided by the parties using Plaintiff's
8 alleged trademarks.

9 This is an action between competitors. The foregoing information warrants protection for
10 privacy reasons and to preserve confidential, proprietary information developed by the parties at
11 their expense for a competitive advantage in providing such goods and services.

12 The foregoing is not an acknowledgment by any party that any materials so listed above
13 are relevant or discoverable for any purpose in this action.

14 3. SCOPE

15 The protections conferred by this agreement cover not only confidential material (as
16 defined above), but also (1) any information copied or extracted from confidential material; (2)
17 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
18 conversations, or presentations by parties or their counsel contain confidential material.

19 However, the protections conferred by this agreement do not cover information that is in
20 the public domain or becomes part of the public domain through trial or otherwise.

21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
23 or produced by another party or by a non-party in connection with this case only for prosecuting,
24 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
25 the categories of persons and under the conditions described in this agreement. Confidential

1 material must be stored and maintained by a receiving party at a location and in a secure manner
2 that ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, the receiving party may
5 disclose confidential information only to:

6 (a) the receiving party's counsel of record in this action, as well as employees of
7 counsel to whom it is reasonably necessary to disclose the information for this litigation;
8 (b) the parties to this action;
9 (c) experts and consultants to whom disclosure is reasonably necessary for this
10 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
11 (d) the Court, court personnel, and court reporters and their staff, if filed under seal;
12 (e) copy or imaging services retained by counsel to assist in the duplication of
13 confidential material, provided that counsel for the party retaining the copy or imaging service
14 instructs the service not to disclose any confidential material to third parties and to immediately
15 return all originals and copies of any confidential material;

16 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
17 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
18 A), unless otherwise agreed by the designating party or ordered by the court. Pages of
19 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
20 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
21 under this agreement;

22 (g) the author or recipient of a document containing the information or a custodian or
23 other person who otherwise possessed or knew the information.

24 4.3 Filing Confidential Material. Before filing confidential material or discussing or
25 referencing such material in court filings, the filing party shall confer with the designating party
26 to determine whether the designating party will remove the confidential designation, whether the

1 document can be redacted, or whether a motion to seal or stipulation and proposed order is
2 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
3 standards that will be applied when a party seeks permission from the court to file material under
4 seal.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each party
7 or non-party that designates information or items for protection under this agreement must take
8 care to limit any such designation to specific material that qualifies under the appropriate
9 standards, as described in paragraph 2, above. The designating party must designate for
10 protection only those parts of material, documents, items, or written communications that
11 qualify, so that other portions of the material, documents, items, or communications for which
12 protection is not warranted are not swept unjustifiably within the ambit of this agreement.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or delay the case development process or to impose unnecessary
16 expenses and burdens on other parties) expose the designating party to sanctions.

17 If it comes to a designating party's attention that information or items that it designated
18 for protection do not qualify for protection, the designating party must promptly notify all other
19 parties that it is withdrawing the mistaken designation.

20 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
21 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
22 ordered, disclosure or discovery material that qualifies for protection under this agreement must
23 be clearly so designated before or when the material is disclosed or produced.

24 (a) **Information in documentary form:** (e.g., paper or electronic documents and
25 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
26 the designating party must affix the word "CONFIDENTIAL" to each page that contains

1 confidential material. If only a portion or portions of the material on a page qualifies for
2 protection, the producing party also must clearly identify the protected portion(s) (e.g., by
3 making appropriate markings in the margins).

4 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
5 participating non-parties must identify on the record, during the deposition or other pretrial
6 proceeding, all protected testimony, without prejudice to their right to so designate other
7 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
8 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
9 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
10 confidential information at trial, the issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a prominent place on the
12 exterior of the container or containers in which the information or item is stored the word
13 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
14 the producing party, to the extent practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the designating party's
17 right to secure protection under this agreement for such material. Upon timely correction of a
18 designation, the receiving party must make reasonable efforts to ensure that the material is
19 treated in accordance with the provisions of this agreement.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
22 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
24 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
25 challenge a confidentiality designation by electing not to mount a challenge promptly after the
26 original designation is disclosed.

1 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
2 regarding confidential designations without court involvement. Any motion regarding
3 confidential designations or for a protective order must include a certification, in the motion or in
4 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
5 conference with other affected parties in an effort to resolve the dispute without court action. The
6 certification must list the date, manner, and participants to the conference. A good faith effort to
7 confer requires a face-to-face meeting or a telephone conference.

8 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
9 intervention, the designating party may file and serve a motion to retain confidentiality under
10 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
12 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
13 other parties) may expose the challenging party to sanctions. All parties shall continue to
14 maintain the material in question as confidential until the court rules on the challenge.

15 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
16 OTHER LITIGATION

17 If a party is served with a subpoena or a court order issued in other litigation that compels
18 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
19 party must:

- 20 (a) promptly notify the designating party in writing and include a copy of the
21 subpoena or court order;
- 22 (b) promptly notify in writing the party who caused the subpoena or order to issue in
23 the other litigation that some or all of the material covered by the subpoena or order is subject to
24 this agreement. Such notification shall include a copy of this agreement; and
- 25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
26 designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately (a) notify in writing the designating party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
7 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
8 Agreement to Be Bound" that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order or agreement that provides for production without prior privilege review. The parties
16 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party, including all copies, extracts
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
21 destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

(END OF DOCUMENT; SIGNATURE PAGES FOLLOW)

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2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4 Presented by:
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6 DATED: April 4, 2018
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1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

2 IT IS FURTHER ORDERED that, pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 Dated this 10th day of April, 2018.

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9 Robert S. Lasnik
10 United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of _____, [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Marsha Linehan v. Lane Pederson and Cognitive Behavioral Specialties d/b/a Dialectical Behavior Therapy National Certification and Accreditation Association*, No. 2:17-cv-01494 RSL. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature:

AMENDED STIPULATED P
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